

CHAPTER III—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

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PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

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AUTHORITY: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

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§ 1313.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which include measures that will improve the effectiveness of the enforcement of State drunk and drugged driving laws.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21655, Apr. 23, 1993]

§ 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement comprehensive drunk driving prevention programs which include measures that will discourage individuals from operating motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that the State drunk driving prevention programs for which incentive grants are awarded meet or exceed minimum levels designed to improve the effectiveness of the enforcement of State drunk driving laws. This part also encourages States to adopt and implement drugged driving prevention programs.

§ 1313.3 Definitions.

(a) *Alcoholic beverage* has the meaning given such term in § 1208.3 of this title, which implements section 158(c) of the National Minimum Drinking Age Act, 23 U.S.C. 158.

(b) A *comprehensive drunk driving prevention program* means a program that reflects the complexity and totality of the State's alcohol traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems. The program must include, at a minimum, the following components:

(1) Regularly conducted, peak-hour traffic enforcement efforts consisting of measures, such as roadside sobriety checkpoints or special DWI patrols;

(2) DWI prosecution, adjudication and sanctioning resources adequate to handle increased levels of DWI arrests;

(3) Other programs directed at forms of prevention other than enforcement and adjudication activities, such as school, worksite or community education; designated driver programs; transportation alternatives; responsible alcohol service programs; server training or treatment programs and

(4) A public information program designed to make the public aware of the problem of drunk driving and of the efforts in place to address it.

(c) *Controlled Substance* has the meaning given such term under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

(d) *Fines or surcharges collected* means fines, penalties, fees or additional assessments collected.

(e) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest.

(f) *Motor vehicle* has the meaning given such term in § 659.5(c) of this title, which implements 23 U.S.C. 154, the National Maximum Speed Limit Act.

(g) *Open alcoholic beverage container* means any bottle, can, or other receptacle:

(1) Which contains any amount of an alcoholic beverage and

(2)(i) Which is open or has a broken seal or

(ii) The contents of which are partially removed.

(h) *Operating a motor vehicle while under the influence of alcohol or under the influence of alcohol while operating the motor vehicle* means operating a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(i) *Repeat offender* means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and to whom is administered one or more chemical tests to determine whether the individual was under the influence of alcohol while operating the motor vehicle and who is determined, as a result of such tests, to be under the influence of alcohol, or who refuses to submit to such a test as proposed by the officer, more than once in any 5-year period beginning on or after December 18, 1991.

(j) *Serious bodily injury* means an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred.

(k) With regard to an individual's driver's license, *suspension* or *revocation* means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year.

(l) With regard to an individual's registration and license plates, *suspension* and *return* means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highways and the confiscation or impoundment of motor vehicle or the motor vehicle's license plates for not less than the term(s) for which the individual's driver's license will be under suspension or revocation.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21655, Apr. 23, 1993]

§ 1313.4 General requirements.

(a) *Qualification requirements.* To qualify for a grant under 23 U.S.C. 410, a State must, for each year it seeks to qualify:

(1) Submit an application to Regional Operations, NRO-01, 400 Seventh Street SW., Washington, DC 20590 that demonstrates that it meets the requirements of § 1313.5 and, if applicable, § 1313.6, and includes certifications that:

(i) It has a drunk driving prevention program that meets those requirements;

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs;

(iii) It will administer the funds in accordance with 49 CFR part 18 and OMB Circulars A-102 and A-87 and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1990 and 1991 (either State or Federal fiscal year 1990 and 1991 can be used); and

(2) After being informed by NHTSA that it is eligible for a grant, submit to the agency, within 120 days, a drunk driving prevention plan for one or more years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(b) *Limitation on grants.* A State may receive each grant for up to five fiscal years beginning after September 30, 1992, subject to the following limitations:

(1) The amount of a basic grant, under § 1313.5, shall equal 30 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, subject to the availability of funds.

(2) The amount of each supplemental grant, under § 1313.6, shall equal 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, subject to the availability of funds.

(3) In the first fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410.

(4) In the second fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410.

(5) In the third, fourth and fifth fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21655, Apr. 23, 1993]

§ 1313.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement five of the following requirements:

(a) *An expedited driver's license suspension or revocation system.* (1) An expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that:

(i) When a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the offi-

cer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

(ii) The notice of suspension or revocation referred to in paragraph (a)(1)(i) of this section shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol or refusing to submit to a chemical test and shall specify any rights of the individual under such procedures;

(iii) The State shall provide, in the administrative procedures referred to in paragraph (a)(1)(ii) of this section, for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(iv) After serving notice and taking possession of a driver's license in accordance with paragraph (a)(1)(i) of this section, the law enforcement officer shall immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

(v) In the case of a person who, after December 18, 1991, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, shall:

(A) Suspend the driver's license of such person for a period of not less than 90 days if the person is a first offender; and

(B) Suspend or revoke the driver's license of such person for a period of not less than 1 year if the person is a repeat offender; and

(vi) The suspension and revocation referred to under paragraph (a)(1)(v) of this section shall take effect not later than 30 days after the individual first received notice of the suspension or revocation.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the expedited suspension system requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant based on this criterion, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(i) of this section, data showing the number of licenses suspended; that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(k); and that the average number of days it took to suspend the licenses meets the 30-day requirement in paragraph (a)(1)(vi) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(k), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the expedited suspension system criterion.

(3)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for an expedited suspension system and data showing that it substantially complies with each element not specifically provided for in the State's law, regulation or binding policy directive.

(ii) To demonstrate compliance in subsequent fiscal years the State re-

ceives a basic grant based on this criterion, a Data State shall submit, in addition to the information identified in paragraph (a)(3)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(k) and that the average number of days it took to suspend the licenses meet the 30-day requirement in paragraph (a)(1)(vi) of this section.

(iii) The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iv) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the expedited suspension system criterion, except that it need not specifically provide for each element of paragraphs (a)(1)(v) and (vi) of this section.

(b) *Per se law.* (1) For each of the first three fiscal years in which a basic grant is received based on this criterion beginning after September 30, 1992, provide that any person with an alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated. For each subsequent fiscal year in which a basic grant is received based on this criterion, provide that any person with an alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance in the first and in subsequent years the State receives a basic grant based on this criterion, the State shall submit a copy of its law adopting this requirement.

(c) *A statewide program for stopping motor vehicles.* (1) A statewide program for stopping motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles

are driving while under the influence of alcohol.

(2)(i) To demonstrate compliance in the first year the State receives a basic grant based on this criterion, the State shall submit a comprehensive plan to conduct a program under which:

(A) Motor vehicles are stopped on a statewide basis;

(B) Stops are made not less than monthly;

(C) Stops are made by both State and local (county and city) police agencies and

(D) Effective public information efforts are made to inform the public about these enforcement efforts.

(ii) The plan shall include guidelines, policies or operation procedures governing the statewide program for stopping motor vehicles and provide dates, approximate locations and participating police agencies for programs planned in the upcoming year.

(3) To demonstrate compliance in subsequent years the State receives a basic grant based on this criterion, the State shall submit an updated plan for conducting its statewide program in the following year and information documenting that the prior year's plan was effectively implemented. The information shall document that programs were conducted and identify which police agencies were involved, and the dates, times and duration of these programs. It must also submit materials used or document activities conducted to publicize these programs.

(4)(i) A State shall be treated as having met the requirement of this paragraph if the highest court of the State has issued a decision indicating that implementation of paragraph (c)(1) of this section would constitute a violation of the constitution of the State and NHTSA determines, based on data contained in the Fatal Accident Reporting System (FARS) and using NHTSA's method for estimating alcohol involvement, that the alcohol involvement rate in fatal crashes in the State:

(A) Has decreased in each of the 3 most recent calendar years for which statistics for determining such rate are available; and

(B) The alcohol involvement rate in fatal crashes in the State has been

lower than the average such rate for all States in each of such calendar years.

(ii) To demonstrate compliance under this paragraph in each fiscal year the State receives a basic grant based on this criterion, the State shall submit:

(A) A certification that the highest court of the State has issued a decision indicating that a Statewide program for the stopping of motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol, would constitute a violation of the State's Constitution; and

(B) A copy of the court's decision.

(d) *A self-sustaining drunk driving prevention program.* (1) A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided through the State's ordinary appropriations process or other ordinary State funding process which demonstrates the accountability of these funds, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(2) To demonstrate compliance in the first and in subsequent years the State receives a basic grant based on this criterion, a State shall:

(i) Submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol;

(ii) Show at least two detailed examples of distinct and representative community programs that are comprehensive, as defined in §1313.3(b);

(iii) Certify that a significant portion of the State's population resides in communities with comprehensive drunk driving prevention programs and list such communities;

(iv) Submit data (or a representative sample) showing the aggregate amount of fines or surcharges, as identified in

paragraph (d)(2)(i) of this section, which are actually collected, the aggregate amount of revenues actually returned or the equivalent amount provided to community drunk driving prevention programs under the State's self-sustaining system, the aggregate cost of the State's comprehensive drunk driving prevention programs and the portions of these costs that are non-Federal;

(v) Certify that these revenues, as identified in paragraph (d)(2)(iv) of this section, or the equivalent amount are being used to continue the operation of comprehensive drunk driving prevention programs; and

(vi) If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, identify the source of these funds.

(3) For the purpose of this section, activities conducted by the State for the benefit of a community may be considered to have been returned or provided to that community, provided that the community benefitted has had an active voice in the initiation, development, and implementation of the activities for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local communities." Where communities have had an active voice in the initiation, development, and implementation of a particular activity, and a community which has not had such active voice agrees in advance of implementation to accept the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Where no communities have had an active voice in the initiation, development, and implementation of a particular activity, but political subdivision requests the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Evidence of consent and acceptance of the work, goods or services on behalf of the community must be established and maintained on file by the State, until all basic grant funds for that fiscal year have been expended and audits completed.

(e) *Minimum drinking age prevention program.* (1) An effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages, which includes the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older. The State must also:

(i) Provide public information to underage drivers;

(ii) Have a program for alcoholic beverage retailers and servers addressing both on- and off-premise consumption;

(iii) Have an overall enforcement strategy directed at the sale and purchase of alcoholic beverages involving individuals under the age of 21; and

(iv) Provide for a prevention program that enlists the aid of individuals under the age of 21.

(2) To demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, a State shall submit a plan to conduct a minimum drinking age prevention program that covers the elements identified in paragraphs (e)(1) (i) through (iv) of this section. The State must also submit sample driver's licenses issued to persons both under and over 21 years of age.

(3) To demonstrate compliance in subsequent fiscal years the State receives a basic grant based this criterion, the State shall submit an updated plan for conducting a minimum drinking age prevention program in the following year and information documenting that the prior year's plan was effectively implemented.

(f)(1) A mandatory sentence, which shall not be subject to suspension or probation, of imprisonment for not less than 48 consecutive hours, or not less than 10 days of community service for any person convicted of driving while intoxicated more than once in any five year period.

(2)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory sentence criterion.

(ii) For the purpose of this subsection, "Law State" means that the State has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, including the requirement that the 48 hour term of imprisonment must be served consecutively.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (f)(2)(i) of this section, data showing that it substantially complies with the consecutiveness requirement. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this subsection, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, except that it need not specifically provide that the 48 hour term of imprisonment must be served consecutively.

(g) *Per se law for persons under age 21.*

(1) Provide that any person under age 21 with an alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated and shall be subject to the temporary debarring of all driving privileges for a term of not less than 30 days.

(2)(i) To demonstrate compliance in each year the State receives a basic grant based on this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the per se law for persons under age 21 criterion.

(ii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the per se law for persons under age 21 criterion.

(3)(i) To demonstrate compliance in each year the State receives a basic grant based on this paragraph, a Data State shall submit a copy of the law,

regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the per se law for persons under age 21 criterion and data showing that the average length of the suspension term for offenders under this law meets or exceeds 30 days.

(ii) The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the per se law for persons under age 21 criterion, except that it does not specifically provide for the temporary debarring of all driving privileges for a term of not less than 30 days.

(h) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (a)(2)(ii), (a)(3)(ii), (b)(2), (d)(2)(i), (f)(2)(i), (f)(3)(i), (g)(2)(i), or (g)(3)(i) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan for conducting a program to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (c)(3) or (e)(3) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's plans that would affect compliance with Section 410 or a copy of any changes to the State's plans.

(3) In lieu of resubmitting two detailed examples of community programs to demonstrate compliance in

subsequent years the State receives a basic grant as provided in paragraph (d)(2)(ii) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's community programs that would affect compliance with Section 410 or a copy of any changes to the State's programs.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21656, Apr. 23, 1993; 61 FR 9104, Mar. 7, 1996; 61 FR 55222, Oct. 25, 1996]

§ 1313.6 Requirements for supplemental grants.

(a) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and make unlawful the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except:

(i) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(ii) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the unlawful open container and anti-consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under subparagraph (b)(1)(i) of this section.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (b)(2)(i) of this section, information showing that it is actively enforcing its open container and anti-consumption statute.

(b) *Suspension of registration and return of license plate program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after December 18, 1991; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the

law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (c)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which the registration was suspended and the license plates returned meets the definition in § 1313.3(l), and the number, reasons for and conditions under which hardship exemptions were granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle. The State can provide the necessary data based on a representative sample.

(iii) If the State does not provide for the suspension of the registration and the return of the license plate, the State can demonstrate compliance with this element by showing that it instead provides for the immobilization, impoundment or confiscation of the vehicle.

(c) *Mandatory alcohol concentration testing program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for mandatory alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a copy

of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (d)(2)(i) of this section, data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that enforcement officers must order and offenders must submit to testing upon a finding of probable cause.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there is probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except

that enforcement officers may be authorized rather than required by law to order and offenders may be permitted to refuse to submit to testing upon a finding of probable cause.

(d) *Drugged driving prevention.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(i) Provide for law concerning drugged driving under which:

(A) A person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance, a combination of controlled substances or any combination of alcohol and controlled substances;

(B) Any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath or urine for the purpose of determining the alcohol concentration or the presence of controlled substances in his or her body; and

(C) The driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than one year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person is determined, on the basis of one or more tests, to have been under the influence of controlled substances while operating a motor vehicle, or refuses to submit to such a test as proposed by the officer;

(ii) Have in effect a law which provides that:

(A) Any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory license suspension for a period of not less than 90 days and either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

(B) Any person convicted of a second violation of driving under the influence

of controlled substances or alcohol, or both, within five years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than one year;

(C) Any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within five years after a prior conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 120 days and have his or her license revoked for not less than three years; and

(D) Any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

(iii) Provide for an effective system for:

(A) The detection of driving under the influence of controlled substances;

(B) The administration of a test or tests to any driver who a law enforcement officer has probable cause under State law to believe has committed a traffic offense relating to controlled substances use; and

(C) In instances where such probable cause exists, the prosecution of those persons who are determined, on the basis of one or more tests, to have been operating a motor vehicle while under the influence of controlled substances and those persons who refuse to submit to such a test as proposed by a law enforcement officer; and

(iv) Have in effect two of the following programs:

(A) An effective educational program for the prevention of driving under the influence of controlled substances.

(B) An effective program for training law enforcement officers to detect driving under the influence of controlled substances.

(C) An effective program for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit:

(i) A law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of paragraphs (e)(1)(i) and (ii) of this section;

(ii) Evidence of the State's participation in the Drug Evaluation and Classification program or an equivalent program meeting standards for such program established by the International Association of Chiefs of Police;

(iii) Information and data showing that persons who fail or refuse to submit to required tests are being prosecuted; and

(iv) A description of either the State's drug education program or the State's drug treatment and rehabilitation program.

(3) *Prompt* means that the period of time from arrest to suspension of a driver's license does not exceed 45 days or does not exceed 90 days and the State submits a plan showing how it intends to achieve a 45-day average.

(e) *Per se level of 0.08.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992 in each of the first three fiscal years in which a basic grant is received beginning after September 30, 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of §1313.5, and provide that any person with an alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit a copy of its law adopting this requirement.

(f) *Video equipment program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must

have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of §1313.5, and provide for a program:

(i) To acquire video equipment to be installed in police vehicles and used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance;

(ii) To effectively prosecute those persons; and

(iii) To train personnel in the use of that equipment.

(2) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a plan for the acquisition and use of video equipment in police vehicles for the enforcement of impaired driving laws, including:

(i) A schedule for the areas where the equipment has been and will be installed and used;

(ii) A plan for training enforcement personnel, prosecutors and judges in the use of this equipment; and

(iii) A plan for public information and education programs to enhance the deterrent effect of the equipment.

(3) To demonstrate compliance in subsequent years, the State shall submit information and data on the use and effectiveness of the equipment, and an updated plan for any acquisition and use of additional equipment.

(g) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a supplemental grant as provided in paragraphs (a)(2)(ii), (b)(2)(ii), (c)(2)(ii), (c)(3)(i), (d)(2)(i), or (e)(2) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan or a description of its program in subsequent years the State receives a supplemental grant as provided in paragraph (d)(2)(iv) or (f)(3) of this section, the State may submit either a statement certifying that there have been

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no substantive changes in the State's plan or program that would affect compliance with Section 410 or a copy of any changes to the State's plan or program.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21655, 21657, Apr. 23, 1993; 59 FR 40474, Aug. 9, 1994; 61 FR 9104, Mar. 7, 1996; 61 FR 55222, Oct. 25, 1996]

§ 1313.7 Award procedures.

In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the application and drunk driving prevention plan required by § 1313.4(a) and subject to the limitations in § 1313.4(b). The release of the full grant amounts shall be subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and plan and the remainder of the full grant amounts, up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

[58 FR 21657, Apr. 23, 1993]

§ 1313.8 States eligible under 410 prior to September 30, 1992.

(a) A State which, before December 18, 1991, was eligible to receive a grant under 23 U.S.C. 410, and its implementing regulation, as in effect on December 17, 1991, may elect to receive in a fiscal year grants under such section 410, and implementing regulation, as so in effect, in lieu of receiving in such fiscal year grants under section 410, as amended, and this regulation, except that such States shall be subject to § 1313.7 of this regulation.

(b) A State that received a basic grant, under section 410, after December 18, 1991 and on or before September 30, 1992, and that continues to meet the criteria for a basic grant, as in effect on September 30, 1992, shall be eligible

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for a basic grant under section 410, as amended on October 6, 1992.

[58 FR 21657, Apr. 23, 1993]

PART 1325—TRANSITION PROCEDURES FROM CURRENT TO NEW NATIONAL DRIVER REGISTER

Sec.

1325.1 Scope.

1325.2 Purpose.

1325.3 Definitions.

1325.4 General transition procedures.

AUTHORITY: Pub. L. 97-364, 96 Stat. 1740, as amended (23 U.S.C. 401 note).

§ 1325.1 Scope.

This rule provides procedures, in accordance with section 203(c)(1) of the National Driver Register Act of 1982 (Pub. L. 97-364), for the orderly transition from the system regarding the motor vehicle driving records of individuals as provided in Pub. L. 86-660 as amended (current NDR), to the system established in Pub. L. 97-364 (new NDR).

[50 FR 28196, July 11, 1985]

§ 1325.2 Purpose.

The purpose of this rule is to provide States with information concerning the procedures which the National Highway Traffic Safety Administration plans to follow to implement the new National Driver Register. This will ensure that participating States understand their rights and obligations during the transitional period which will commence on the effective date of this rule and will terminate upon the establishment of a fully electronic Register system, but not later than April 30, 1995.

[50 FR 28196, July 11, 1985, as amended at 56 FR 41403, Aug. 20, 1991]

§ 1325.3 Definitions.

(a) *Problem Driver Pointer System (PDPS)*. System whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information, without interception, to the State requesting the information (State of Inquiry).